

## Scope of Services

In order to assist the Council in determining the optimum scope of services for the Highways Partnership an independent scope review was commissioned jointly by the Head of Highways and Head of Neighbourhoods (available on request) and was undertaken by Kingsclere Associates to determine, on the basis of objective evidence, which services should be included in the Partnership. In considering the question, the review focussed on: current service delivery; achievability, deliverability and focus; including commercial and financial considerations. Its conclusions were also drawn from two relevant case studies, dialogue with service providers and existing service performance information.

The Independent Scope Review recommended the following:

<b>In-scope services</b>	<b>Possible Inclusion</b>	<b>Out-of-scope services</b>
Highway planned and routine maintenance Highway Capital Projects Highway management functions (street works) Traffic signs Traffic signal maintenance Highways Business Support Bridges and structures design and works Gulley cleansing Parking surfaces	Third Party liability claims Urban traffic control (ROMANSE)	Fly tipping Grounds maintenance Graffiti removal Highways verges and trees Street cleansing Street-lighting Parking enforcement Refuse and waste disposal Planning and Sustainability Environmental health and protection Highway events management

Table 1 – Independent Scope Review: recommended scope of services for highways partnership

Members considered the Independent Scope Review. These deliberations informed the Cabinet and Council Report (30/06/08\_16/08/08) recommendations on scope. Procurement commenced<sup>1</sup> outlining a scope as set out in Table 2, below, with the caveat that this would be reviewed prior to Final Tenders if any demonstrable benefits transpired as a result of dialogue for the inclusion or removal of any of the proposed services.

<sup>1</sup> Based on the Cabinet and Council Report recommendations an OJEU notice was placed which covered the in-scope services identified in Table 2, as well as all generic highways services and references to Bridges and Structures. This provided flexibility to bring other highways related services in scope if necessary.

In particular, the services in bold, in the table below, would be raised during dialogue and the exact dividing line of these services would be determined through dialogue (i.e. the service could be partially in-scope and partially out-of-scope depending upon the final specification).

<b>In-scope services</b>	<b>Out-of-scope services</b>
Highway planned and routine maintenance Highway Capital Projects Highway management functions (street works) Traffic signs Traffic signal maintenance Highways Business Support Gulley cleansing <b>Parking lines and signs</b> <b>Third Party Claims</b>	<b>Urban traffic control (ROMANSE)</b> <b>Transport Policy and Strategy</b> Fly tipping Grounds maintenance Graffiti removal Highways verges and trees Street cleansing Street-lighting Parking and parking enforcement Refuse and waste disposal Planning and Sustainability Environmental health and protection Highway events management Bridges and structures design and works

Table 2 - Procurement: Scope of Services

In summary, the dialogue has not provided any information or demonstrable benefits (i.e. quantifiable VFM) to compel the Council to fundamentally revisit the scope of services to be included within the HSP. However, throughout the dialogue and in the process of developing the service specifications the Council has firmed up its requirements in a number of areas.

### **Transport Policy and Strategy**

Responsibility for Transport Policy and Strategy currently resides outside of the Highways Division and within the Planning and Sustainability Division. In order for the Council to retain control of its strategic approach to transport it is recommended that the Transport Policy section remains out of scope of the HSP.

However, while the Council will retain control and direction, the HSP will be required to inform policy and strategy decisions using their knowledge of the network and therefore there will be a close working relationship between Policy and the Service Provider, managed by the Highways Client Team. Additionally, if the Transport Policy section does not have the in-house capacity or resources to develop Policy or Strategy documents the Service Provider will be able to step-in. Simply, the Council will always own and direct Transport Policy and Strategy but the production and consequent delivery can be delegated, where appropriate, to the Service Provider.

### **Bridges and Structures**

Bridges and Structures design and management is currently delivered by the Capita Strategic Services Partnership (SSP). The bridges maintenance and capital programmes are delivered through a framework contract which is managed by the SSP.

During the dialogue, Bidder's expressed a desire to deliver design and maintenance work. The synergy between Highways, and Bridges and Structures Design and Maintenance presents an opportunity to achieve additional efficiency savings (over and above that which would be achieved from combining the constituent client functions for these services). However, this would need to be offset against any costs incurred as a result of removing the delivery of design and maintenance work from the SSP contract.

The project team raised this possibility internally in order to at a minimum explore the approximate cost of removing the aforementioned service from the SSP contract. The Project Board referred this matter to the SSP Governance Framework. The view expressed by the SSP Client was that it would not be appropriate for this option to be explored further given the wider SSP context.

### **Parking lines and signs**

Parking lines and signs was not included within the lump sum service element of the ISDS specification. The service is relatively reactive and low value per annum yet requires a high service level to enable the Council to enforce Fixed Penalty Notices. Therefore, bidders were asked to submit pricing to deliver a comparative level of service to that which the Council currently receives. The average price submitted by bidders was not competitive<sup>2</sup> and therefore it is recommended that this service is out of the HSP scope and continues to be managed by Parking and Enforcement Services.

### **ROMANSE**

ROMANSE (Road Management System for Europe), the council's intelligent traffic control system was determined to be out of scope of the HSP, however the Council was keen to understand from bidders any benefits of including within the HSP.

Early dialogue was initiated with bidders on the benefits of including the ROMANSE services within the scope of the contract. Bidders were asked at outline solution stage (ISOS) to provide any evidence or examples, from other contracts, where they had delivered demonstrable benefits through the inclusion of similar traffic control services. No strong cases were forthcoming over and above a general increase in turnover being beneficial overall. At a pre-ISDS Review Project Board confirmed that the service should not be included within the scope of the ISDS documents.

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<sup>2</sup>

ISDS prices benchmarked against existing rates were not competitive

Therefore, it is recommended that ROMANSE remains outside of the HSP scope and continues to be managed as a separate service.

### **Street Cleansing and Grounds Maintenance**

Street Cleansing was identified as an out-of-scope service. The Independent Scope Review identified the service as high performing and low cost and therefore questioned the value of inclusion.

The inclusion of these services has been re-questioned since the original decision not to include within the scope of services. However, OJEU Notice restrictions preclude the inclusion of these services in the HSP. Legal advice states that the inclusion of these services, given their relative value against the overall contract value would likely breach EU procurement regulations. Furthermore, the rationale for exclusion at the outset of the project still stands and has since been compounded by other initiatives within the service area.

### **Third Party Claims – against the Council**

Third Party Claims (TPC) - claims made against the Council due to the state of the highways - can be split into two elements; the handling of the claims; and, the risk or liability for the claims.

Currently, claims against the Council are investigated by Highways and handled by the Council's Insurance section. Highways' pays a substantial sum from its existing budgets (thus reducing potential spend on the network) to the Council's Insurance section to cover administrative costs of delivering this service and the payments for claims made against the Council as a result of the condition of the highways network or failure to meet service levels. Only claims over £100k are paid through Insurance and therefore the Council is effectively self-insuring.

The majority of successful claims against the Council are as a result of the Council not achieving service levels (e.g. inspecting a defect yet not repairing within the required timescales). Under the HSP the Service Provider will be contractually obliged to meet the required service levels and therefore a significant reduction in successful claims and payouts is anticipated. The current service levels and those under the contract are similar and in-line with the Highways Code of Practice, the reduction will be from the Service Provider increasing compliance with those service levels and being able to better demonstrate and evidence that these levels had been achieved.

### **Proposed Approach**

The key principle underpinning the HSP approach is for the management and stewardship of the highways service and network to be passed to the HSP Service Provider. This encourages the Service Provider to adopt a holistic approach to service delivery. Therefore, the current position within the HSP Service Agreement is for the majority of the risk (i.e. pay outs) of claims made against the Council to be transferred to the Service Provider. This entails the

Council including a sum of money within the overall affordability budget, effectively transferring that element of budget out of Council control.

This approach acts as an additional incentive (over and above the Performance Framework described below) to the Service Provider to ensure that all specified service levels are met. If the required service levels are not met the Service Provider is exposed to a potential increase in claims; if the claims can be reduced below the allowance for claims pay-outs the Service Provider has made within their business model then there is an increased profit.<sup>3</sup>

Passing the risk of claims pay-outs to the Service Provider incentivises them to ensure service levels are met. At ISDS the Council proposed passing the handling of claims to the Service Provider in order to present control of the process to the Service Provider. This reduces the risk to the Service Provider of the Council not handling a claim adequately so that a pay-out is successful despite the Service Provider fulfilling its obligations.

However, the responses provided by bidders through ISDS did not provide the Council with a level of confidence and clarity over the mechanics of the handling process; E.g. there will be claims which do not fall simply to the Council or the Provider and a process for allocating and then managing these claims will need to be clearly laid out. Therefore, the Council is seeking to retain a greater control over the claims handling process.

This approach would leave the Council with a residual liability for any successful claims made against the Council due to inadequate service levels or materials specified. This risk here is relatively low as the service levels specified meet the guidelines laid down in the Highways Code of Practice. Only a Court is in a position to overrule the adequacy of the Highways Code of Practice.<sup>4</sup>

The key risk to the Council in adopting this approach is that the Service Provider seeks to pass back the responsibility for payment of claims, most likely through a loophole within the Service Agreement. In this scenario the Council would have allocated a financial sum to cover residual claims yet would not have accounted for claims passed back from the Provider. This is a clear risk, however, it is one which can be mitigated through clear and robust drafting of the Service Agreement. Additionally, it would be prudent to retain a risk sum, over and above the sum retained for expected claims, to cover these eventualities.

### **Alternative approaches**

An alternative approach to dealing with claims against the Council would be to retain all liability for claims made against the Council due to the state of the network. The number of claims is again likely to reduce as the Service Provider

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<sup>3</sup> Superficially, while allowing the Service Provider to retain unspent allowances for claims may seem like the Council is not benefiting from reduced claims, the competitive tension of the procurement encourages the bidders not to 'pad' these allowances within their business model. Additionally, this is the trade-off against the Provider taking the risk of claims increasing.

<sup>4</sup> <http://www.roadscodes.org/>

will still be required to meet service levels and will have access to more robust record keeping for provision of evidence to the Council.

However, the additional incentive for the Provider to meet service levels and reduce claims is removed as there are no opportunity costs available.

With no liability for meeting service levels, over and above the contractual mechanisms for not achieving against the performance framework, there is less inducement for the Service Provider to achieve those service levels.

### **Position for Final Tenders**

Evidence from the dialogue process has demonstrated there is a significant VFM argument to include the transfer of Third Party Claims to the Service Provider<sup>5</sup>. There is a risk of the approach not being clearly defined, therefore allowing the Service Provider to pass back responsibility for claims. However, this risk can be mitigated by establishing prior to selection of Preferred Bidder a clear and detailed process, controlled by the Council, and retaining an element of risk contingency.

On the basis that the Proposed Approach delivers value for money, as demonstrated via ISDS submissions, and that the risk of the approach can be effectively managed, it is recommended that this is the position included in the Final Tender documents.

### **Third Party Claims - Claims made by the Council against third parties**

Third Party Claims (TPC) - claims made by the Council against third parties for damaging the network - can also be split into two elements; the handling of the claims; and, the risk or liability for the claims.

Currently, claims made by the Council are managed by Highways. It follows that the service should be managed by the Service Provider within the HSP (as there would be not be the required level of resource to do so internally). It is also logical therefore for the risk of recovery of these claims to rest with the Service Provider.

The Council is transferring the management and maintenance of the network to the Service Provider and will recompense the Service Provider for this through a lump sum payment (section 6.3.3.). The Service Provider will be responsible for repairing all defects within specified timescales. It is sensible that the recovery of monies for damage to the network is the responsibility of the Service Provider (with a clause restricting the Service Provider chasing sensitive claims without Council's express permission) to act as an incentive to recover costs.

### **Service Interfaces**

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<sup>5</sup> Both remaining bidders included a significantly reduced sum for TPC within their ISDS models. Not specified here for Commercial Confidentiality reasons.

The HSP will encounter a number of key interfaces with other Third Parties to which the Council is contracted to. These interfaces will require careful management and would be managed in the first instance by the respective Client Functions. It is expected that this management requirement will be reduced overtime, as relationships between the two client functions mature.

### **Street Lighting PFI (Tay Valley Lighting/Southern Electric Contracting)**

The Street Lighting PFI is scheduled to commence in April 2010. A five year Core Investment Period (CIP) programme will commence soon after. The key interface between the PFI and HSP will be the coordination of the Capital Programme and CIP. The coordination of these programmes will be managed by the integrated HSP and PFI Client Team (section 9.2).

The second area of interface is the coordination of emergency responses. The HSP will have overall responsibility for coordination – in the event that emergency incidents affect more than one service area i.e. street light and highway.

### **Strategic Service Partnership (SSP) (Capita)**

There will be a number of key interfaces between the HSP and SSP; ICT; Customer Contact, and Bridges and Structures.

The project team has worked with all of the SSP Client Reps to ensure that the specification between the HSP and SSP does not overlap or duplicate and neither does it leave gaps between service requirements. Additionally, the positions reached within the HSP Service Agreement documents have been designed to ensure minimal impact on the SSP in terms of contract variations.

ICT solutions will be delivered by the HSP. Hardware will be provided by the HSP. Software will also be provided by the HSP for all Highways Services. However, the Service Provider will be required to interface with a number of corporate systems.

Customer Contact will continue to be routed through Actionline. Actionline will continue to work as it currently does, however, calls will be passed to the Service Provider where applicable.

Bridges and Structures are also a key interface and are referred to earlier in this section.